United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

76-6091

To be argued by
Madeline De Fina

- -

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75 Civ. 2362

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Richard J. De Fina,
Plaintiff-Appellant,
against

Ritchey Williams, individually and as Chief, Division of Reimbursable Investigations, U.S. Civil Service Commission, ITT Federal Laboratories, a Division of International Telephone and Telegraph Corp., Thomas J. Minogue, individually and as employee of ITT Federal Laboratories, "George Doe" and "John Doe" whose true names are presently unknown,
Defendants-Appellees

- -

REPLY BRIEF OF PLAINTIFF-APPELLANT TO DEFENDANTS-APPELLEES, ITT FEDERAL LABORATORIES, a Division of International Telephone and Telegraph Corp., and THOMAS J. MINOGUE in Action No. 75 Civ. 2362

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MADELINE DE FINA, ESQ.,
Attorney for Plaintiff-Appellant,
220-31 Union Turnpike
Flushing, New York 11364
Tel. (212) GR 9-1555

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Introductory Statement

Unfortunately, for the defendant, ITT Federal Laboratories(legally dissolved and whose assets were taken over by ITT Corporation-Affirmation of Goldberg JA 14), and for the defendant, Thomas J. Minogue, the issues raised by the appeal are not "extremely limited."

There are many serious Constitutional questions and issues.

It is not undisputed that ITT's principal place of business is New York. Judge Knapp made it an "undisputed fact that ITT's principal place of business is New York..." not the plaintiff.(JA 24)

According to the Certificate of Incorporation ITT Corporation is a Delaware Corporation with its principal place of business located in Delaware.

On November 15, 1968, ITT's subsidiary, ITT Space Communications Inc.,filed an "application for authority" under Section 1304 of the Business Corporation Law of New York State"for authority" to transact business in New York City.

Defendant Minogue is working as Labor Relations Manager of the ITT Hydro Space Division in San Diego, California, a branch of ITT's Space Communications Inc., which has authority under the above mentioned "application for authority" to carry on its business in New York City.

It was wrong to dismiss plaintiff's complaint against Minogue for lack of "in personam" jurisdiction. The complaint of plaintiff against ITT and Minogue was wrongfully dismissed.

On page 2(brief-p.2) ITT and Minogue refer to "complaints" and "plaintiffs."

It is beyond my comprehension what is meant by "complaints." There is only one complaint 75 Civ. 2362 against ITT and Minogue. Again defendants state "plaintiffs." There is only one plaintiff suing ITT and Minogue (JA 13). It could be a typographical error such as defendants made in their Index stating "Title 23" instead of "Title 28 (defendants-Appellees' Brief-Index ii).

Being human, as well as attorneys, we all make errors; hence, the need for erasers. Sometimes human eyesight causes the oversight of a typographical error. These slip-ups are never left undetected and unmentioned when made by plaintiff's attorney; on the other hand when there was a temporary loss ofa judgment submitted by the U.S. Attorney(JA 5)that had an inaccurate back on it (Catherine Rabbit, as Executrix, of the Estate of James F. Rabbit, Deceased, Plaintiff,against Department of the Air Force, Defendant, Notice of Settlement, Consolidated Index No. 75 Civ. 1526)the mistake was allowed to stand. Only when the record on appeal was being prepared did the Clerk cross out the incorrect title.

There is a veiled threat on page 2 of the defendants' Brief as follows:

> "Although much can be said by ITT and Minogue about the nature and temper of this exasperatingly involved litigation-which must surely have tested the patience of District Judge Knapp and his staff to the breaking point-said defendants would much prefer to leave any such comments to be made by one of the other appellees, on behalf of whom it is understood the U.S. Attorney has been granted an ex-

tension of time..."

Why should these persons get a breakdown and not the plaintiff? Why should their patience be tested and not the plaintiff's?

They are working and have an income. Plaintiff is kept unemployed and unemployable by even the New York State Unemployment Agency until his record is cleared and vindicated.

Judge Knapp stalled the plaintiff for almost two years without even a semblance of due process of law.

Openly in Court on April 9, 1976 Judge Knapp stated he did not know Minogue had been personally served! When counsel stated it was in the papers filed, Judge Knapp asked "What papers?";and when told in plaintiff's papers he stated "Oh,I never read your papers."

Judge Knapp said he would get the Marshal's service from the clerk and Minogue's answer and other papers.

These documents were given to Judge Knapp and could not be found after they were sent to his chambers.

Counsel spent almost 200 hours in the Clerk's office trying to locate the service of Minogue, Minogue's answer, and other pleadings that had vanished; correcting wrong docket entries ; and had to end up making a motion to file true copies of lost and missing papers (JA 14, 15).

What if plaintiff did not have in his file true

copies of the lost and missing papers?

It is not the reading of appellant's Civil Appeal Pre-Argument Statement or Brief as claimed by defendants-appellees that make it "doubtful" what plaintiff's case is all about, but the reading of the Brief of the defendants-appellees that confuses and distorts.

Questions Presented

The Defendants-Appellees ignored Appellant's Brief except to refer to it in a general derogatory way and only cited the pages of the Joint Appendix hence it is not surprising that Defendants-Appellees on page three of their Brief stated the following:

> "The sole question raised by the appeal from the judgment of dismissal herein as against ITT and Minogue is:
>
> Was said dismissal properly ordered by the District Court on JURISDICTIONAL GROUNDS?"

If the appellant's Brief had been read by the defendants-appellees they would have read the following: 75 Civ 2362:

"February 6, 1976, plaintiff-appellant acting Pro Se, (see supra) appeared to argue the motion to compel the appointed Magistrate, Sol Schreiber, to report, why he withdrew and refused to hold a hearing on October 9, 1975.

Plaintiff showed Judge Knapp certain documents. After reading the documents Judge Knapp asked plaintiff if he had anything else to say. Plaintiff responded he was sure there was something that he should say, but not being a lawyer he could not think what it should be. Judge Knapp replied, "We'll see if we can't think of it for you." March 1, 1976 this motion was marked "withdrawn as moot." Plaintiff was denied due process of law.

"75 Civ. 2362 (p.p.5,6,ap.br.)

"Plaintiff-appellant is appealing the confusion and errors of law resulting from consolidating his action 75 Civ. 2362 with his attorney's, Madeline DeFina's 75 Civ. 2681. The defendant ITT and the defendant Minogue made a motion returnable February 27, 1976, that in 75 Civ. 2681 Miss De Fina did not properly serve the defendant Minogue. There was no issue. The Marshal served Minogue by certified mail in New Jersy and it was conceded that Minogue was living in Califonia at the time. In addition, Government Counsel was asserting that Miss De Fina did not exhaust her administrative remedies. Here again there was no contest.

Neither was true in plaintiff-appellant's case 2362. Minogue was properly served personally in California, and plaintiff-appellant had exhausted his administrative remedies.

February 26, 1976, Judge Knapp issued order #43963

in the case of 2681 only (plaintiff's attorney's case). Judge Knapp marked the motion of ITT and Minogue in 2681 "withdrawn as moot."

Plaintiff, Madeline De Fina, in her action 2681 made a motion and as a result Judge Knapp issued order #44076 that a hearing would be held only on the question of Minogue's service in 2681 on April 9, 1976, but entered #44076 in all of plaintiff-appellant's cases.

Judge Knapp on April 19, 1976 issued two memorandums and orders #44268 and #44269 and consolidated both orders by making them "supplemental" to each other; then he dismissed both actions 2362 and 2681 on the same ground: lack of personal jurisdiction and added that New York's "Long Arm Statute" did not apply.

The confusion of the law and facts in these two separate and distinct cases constitutes reversible error."

Page 46 of Appellant's Brief states:

"75 Civ. 2362

"Richard J. De Fina adopts by reference p. 4 as to 75 Civ. 2362, and p.p. 5,6 as to 75 Civ 2362 and the denial of the correction of the false federal records made by the federal and non-federal defendants."

Was it error to deny correction of these false files made in violation of plaintiff's rights under the 4, 6, 9, and 14th amendments of the U.S.Constitution?

The question plaintiff asked in his Brief (p.51) is did the lower Court err in dismissing the complaint against the defendant, Minogue, on the ground that CPLR 302 exempted him from service as the action sounded in defamation?

The question plaintiff asked in his Brief (p.52) is did the Court err in granting summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in this action?

The question plaintiff asked in his Brief (p.55) is did the Court err in dismissing the complaint against ITT Federal Laboratories for lack of diversity jurisdiction and ignore completely plaintiff's complaint and amended complaint alleging ITT and Minogue violated his Constitutional right to privacy and his rights under the 4, 5, 6, 9, 14th amendment of the United States Constitution?

It is erroneously put in defendants-appellees's brief that the substance of point IV (appellant's Brief-p. 56)applies to the non-federal defendants, ITT and Minogue. This is a deliberate "error." A reading of"point IV" establishes beyond all question that this point is directed to the federal defendant, Ritchey Williams, Chief of...Investigations, U.S.Civil Service Commission.

Point IV cites 5USC 552(D) and discusses it as applied to "FBI and CSC"(Civil Service Commission) re-

cords.

Any statement by the defendants, ITT and Minogue, that 5USC 552 was meant to apply to non-federal defendants is false,and judging from the "tone and temper" of the complete "Reply" submitted by these defendants ITT and Minogue, to this Court this was their intention- to misrepresent "Point IV" to the Court.

Revelant Facts
I

In a most derogatory manner defendants' Brief makes note that they do not know "what the case is all about"(defendants' Brief-p.3). In "Relevant Facts" ITT and Minogue state that there is a "...plethora of claims and counterclaims..."(defendants' Brief-p. 3). The only "plethora" of claims were the false voluminous records concocted by the defendants, including the defendants, ITT and Minogue.

Plaintiff will not dignify by discussion the false, half truths,and out and out falsehoods given to this Court by ITT and Minogue as actually being taken directly from plaintiff's Complaint(defendants' Brief- p. 4).

After deceiving and misrepresenting to this Court in their Brief ITT and Minogue hypocritically state:

> "It is respectfully submitted that, if these claims appear to be a bit confusing, it is be-

> cause that is precisely the way they read. The important point for this Court's consideration on the present appeal, however, is that the gravamen of De Fina's amended complaint against ITT and Minogue (sometimes spelled "Monogue" therein) is to recover $1,000,000.00 in compensatory damages against ITT and Minogue for both libel and slander(the claimed slander has something to do with aspersions allegedly cast by ITT and Minogue upon De Fina's sister, Madeline De Fina,who is representing him herein as his attorney) and to recover punitive damages against Minogue." (defendants' Brief-pp.4,5).

The answers of ITT and Minogue would have been stricken by the lower Court,if the lower Court had been unbiased, unprejudiced, and fair.

In order to save time and give the truth to this Court as to what is in plaintiff's Amended Complaint Plaintiff will give direct quotes from his Amended Complaint.

Direct quotes from plaintiff's Amended Complaint(JA13) follow:

I

> "1. Jurisdiction is founded on U.S.C.Title V Section 552; Invasion of privacy, in violation of the IX Amendment of the Constitution of the United States; U.S.C. Title 18 Section 1001, making false records and statements part of a U.S. Civil Service file in pursuance of a conspiracy to prevent plaintiff from obtaining employment with any U.S. Government agency or any other employer."

****

II

****

> "3.Ritchey Williams is the Chief of the Division of Reimbursible Investigations, U.S.Civil Service Commission, Washington, D.C. and is in charge of

investigations and maintaining of the libelous and ficitious file of the plaintiff."

"4. Defendant ITT Federal Labs was plaintiff's employer from September 17, 1962 until July 13, 1964, laid off due to lack of work and rehired on or about June 7, 1965 and forced into resigning on July 8, 1965 and whose employees, defendants in this action, changed the dates to July 1964 to July 1965 and made these dates part of the file maintained by the defendant, Ritchey Williams. Defendants address is Clifton, New Jersey."

****

"6. Defendants, George Doe and John Doe, are employees of defendant ITT Fed Labs, whose names are deleted from the file which is the subject of this action and whose addresses are unknown."

"7. The defendant, Kitchey Williams, on information and belief, was in charge of sending out investigators to make full field investigation on the plaintiff in 1971, 1973 and 1975. The investigators and the defendant, Ritchey Williams, decided in each case that plaintiff was to be forced out of his position as sky Marshal in 1971, denied a position withthe Drug Enforcement agency in 1973 and denied a position with the Federal Aviation Administration in 1975, all based on false records, false statements and refusing plaintiff the right to be heard or to know what was in the file relating to him."

"8. In January 1971, plaintiff took a "walk in" test which was being given by the Treasury Department, Bureau of Customs, with the understanding, if accepted, a full field investigation would take place while plaintiff was in training. If anything turned up derogatory to the plaintiff he would be dismissed. Plaintiff passed very difficult written tests, psychological tests, physical and as to eye sight there were no set requirement and plaintiff was sworn in as a U.S. Marshal on the Sky Marshal program."

"9. Plaintiff went into training at Fort Belvoir, was chosen as the class leader and was about to graduate when on February 9, about 9:30p.m. plaintiff was sent for and told that his vision did not meet requirements and that he would be dismissed if he did not resign. Plaintiff resigned on February 10, 1971.

"10. On or about May 14, 1975, plaintiff received

forty seven numbered pages and about six forms, deleted as to all names and other important material, from Robert J. Drummond, Director of U.S.Civil Service Commission, Bureau of Personnel Investigations, as a result of a demand made under U.S.C.Title 5 Sec. 552."

"11. Part of these documents revealed the true reason for plaintiff's forced resignation from his sky marshal position on February 10, 1971, and plaintiff incorporates the attached exhibits marked AI to A 5, by reference as if fully set forth here. It was the false statements made by the defendants, ITT FED. LABS and its employees, acting within the scope of their employment which cost plaintiff his position and which he now seeks to be reinstated in."

"12. The false statements made by the employees of the defendant, ITT Fed Labs., were accepted without justification, illegally and wrongfully, in pursuant of the conspiracy to keep plaintiff unemployed, and the defendant, Williams, or his assistants, wrote in their report, see the attached EX A 1 that attacked the credibility of the plaintiff by writing, "July 1964 to July 1965. Discrepancy in claimed dates of employment.'"

"13. According to the attached exhibits A I to A 5 the investigation of the employees and personnel department of the defendant, ITT FED LABS was conducted on February 3, 4, 8, and concluded see EX A on 2/9/71. This was the night, 2/9/71, that plaintiff was sent for and deceitfully, told the wrong reason for being forced into resigning, it was not his vision but the false statements, fictions, inflamatory and criminal conspiracy that forced his resignation. See EX B, attached hereto and made part of this complaint as if fully set forth herein.

****

18. That on or about May 14, 1975, plaintiff came into possession of written libels and false statements (see EX AI to A 5) made by the defendant ITT FED LABS, employees acting within the scope of their employment and to bring gain to themselves and to their employer, ITT FED LABS, by joining in a conspiracy of libels, false statements and records to bring plaintiff into public contempt, ridicule and deprive him of employment and the right to earn a living in his field of expertise, electronics. The libels were spoken in presence of others, published

and read so that plaintiff cannot get employment or a hearing to refute the libels and false records, See EX C."

"19.The defendant, THOMAS J. Minogue, threatened to ruin plaintiff, his sister and attorney, Madeline DeFina, on July 8, 1965. The defendant, Thomas J. Minogue, had a woman phone plaintiff's attorney and wanted to speak to only Miss DeFina. The defendant, Minogue, then told plaintiff's attorney that he waited"three years"to tell her "off" and that what the Military had done to her was nothing compared to what he was going to do to her through ITT FED LABS, and to the plaintiff, we were "finished."

"20. That on or about January 25, 1963, I was held up to humiliation when I was called into the office of ITT Federal Labs. and questioned by two men as to my being adopted. I referred them to my attorney, Miss De Fina."

"21. The defendant, Thomas J. Minogue, alleged that he was going to investigate on behalf of the defendant, III Fed. Labs, thus invading my privacy, as now appears by EX A 4 that the defendant, ITT Fed Labs, through some person, name deleted, "....made some discreet inquiries...It also included some agency calling Miss De Fina, that my birth was being investigated."

"22. From the time ITT Fed Labs, through its employees, acting on behalf of the defendant, ITT, started casting doubt on my birth until the present, harassing calls are made to Miss DeFina concerning my birth one made on February 9, 1971, at midnight and this is now confirmed in the documents I received, one sheet which is attached hereto as EX A4 states, "... she had him out of wedlock. He used his grandmother's name as his mother." These acts of the defendant has caused repeatedly to be put into my file that my parentage is in doubt."

****

"28. As against the defendant, ITT Federal Laboratories, an order, compelling the defendant to correct its false files to reflect the true dates of plaintiff's employment as of September 17, 1962 to July 13, 1964 and from about June 7, 1965 to July 8, 1965, so that the cloud over plaintiff, that he has told untruths about his employment will cease, that Defendant be enjoined from the stating of the falsehood that plaintiff was suspended, which is false and malicious, and said to

> do great damage to plaintiff's right to obtain employment; and that the libel pre se, pertaining to his birth, be enjoined, and to pay damages in the sum of $1,000,000.00 with the other defendants."
>
> "30. That plaintiff be given his right under the Freedom of Information Act to a speedy trial on this criminal conspiracy that takes in so many Federal Agencies with the U.S.Civil Service Commission."

The pertinent parts of the answer of the defendant, ITT, to plaintiff's Amended Complaint alleges after general denial(JA 13):

> "Fifth: Denies each and every allegation set forth in paragraph designated "4" of the amended complaint but denies knowledge or information regarding dates of employment."

The pertinent parts of the answer of Minogue to plaintiff's Amended Complaint, after general denial is as follows(JA 13):

> "Third: Denies any knowledge or information thereof sufficient to form a belief as to the allegations set forth in paragraph designated "4" of the Amended Complaint but admits that ITT was plaintiff's employer for a period of time."

EXA1 to EXB attached to plaintiff's amended complaint are copies of some of the 47 pages sent to plaintiff on or about May 14, 1975(paragraph 10-Amended Complaint). The pertinent parts of these exhibits are:

Ex. A1 is a "Report of Investigation" conducted by the United Staes Civil Service Commission at the ITT plants in Nutley and Paramus, New Jersey. The purpose of this investigation was to determine the plaintiff's fitness to graduate as s sky marshal and continue in

Government Civil Service Employment. The investigator spent three days conducting this investigation at the ITT plants, February 3, 4, 8, 1971. This report contains a synopsis which reads, "Period covered July 1964 to July 1965. Discrepancy in claimed dates of employment. Question of emotional stability..."

EX.A2(37)-pertinent part reads: "ITT Laboratories 150 Kingsland Ave.,Clifton,N.J. Record information furnished by(name deleted)."This will be "George Doe"until plaintiff gets his legal rights under the Federal Rules of Civil Procedure and allied laws as to the true identity of this individual.

This "George Doe" states plaintiff was employed according to ITT's employment file from July 13, 1964 to July 8, 1965; gives his social security number, date of birth, where he lives, and that he was not"eligible for rehire." Then comes an absolutely damaging falsehood by "George Doe," that has been reduced to a permanent ITT record on the plaintiff,to the effect that plaintiff "had been suspended on one occasion for insubordination; but the date and details are not listed."

Plaintiff was never suspended.

"George Doe" then goes on to make more false statements that when plaintiff started working for ITT in July 1964 plaintiff was attending college"at the time he was hired in July 1964."

On the same page is another statement(name deleted-and whom plaintiff names as "John Doe" in his summons and complaint). This statement affirms the false employment dates making plaintiff unfit as a sky marshal,and calls plaintiff a "troublemaker," and states John Doe "I would hesitate to trust him with any information concerning our security..."

This is an outrageous statement to make about a man who voluntarily served four years in the Air Force and received an honorable discharge(before that statement was made), and who never gave anyone reason to question his loyalty to his country or to an employer.

The third statement by another unknown employee of ITT personnel office(EX.A3-p.38)affirms the false employment date of one year, 1964-1965.

Both Judge Knapp and Magistrate Schreiber rejected and refused to accept the offered proof of plaintiff's ITT pay stubs dated from 9/17/62 to 7/13/64 and from on or about June 7, 1965 until July 8, 1965; and plaintiff's income tax, union cards, etc.

This Court is respectfully urged to read EX.2 attached to plaintiff's first Complaint filed 5/19/75 (JA13), which is a letter of recommendation dated February 15, 1965. This letter was written by Mr. Cunnington, ITT's personnel manager during the time plaintiff worked there. Mr. Cunnington in his letter states:" Mr. Richard

De Fina was employed by ITT Federal Laboratories from 9/17/62 until 7/13/64...

Mr. De Fina was considered to be a good, conscientious employee and is recommended for employment.

Revelant facts as to reasons why ITT and Minoque deny plaintiff worked for ITT in 1962 and 1963.

II

Why does ITT a giant international corporation seek through falsifying employment records to conceal that plaintiff worked for it during 1962 and 1963?

The true facts expose a diabolical planning by the military, CIA, FBI and the United States Court of Military Appeals accidentally becoming known to plaintiff's counsel when a Ms. Minogue, perhaps a relative of Thomas J. Minogue, misfiled a document from Colonel Garnet to Colonel Lancefield dated February 19, 1959 .

Plaintiff's sister, and presently his attorney in this appeal, handled without compensation and only as an attorney seeking to help two indigent, military prisoners two cases. One was the case of Airman James Jordan condemned to death in England. Counsel will not go into details except to state that she received not one cent for her expenses or services.

Jordan's appeal was sustained; the indictment was quashed, and Jordan was freed. This made headlines and plaintiff's attorney's picture was published in newspapers.

The second case to make headlines was the case of Freeman Reese charged with wartime desertion while in England.

This case also made headlines in newspapers and in negro magazines.Plaintiff's attorney obtained a reversal of his conviction and a new trial for him.

Plaintiff during all the time from 1956 to 1958 that his counsel was handling these unpopular military cases was honorably serving his country overseas and knew nothing about these cases which included representing Sgt. Roy Rhodes of the Abel spy case.

March 17, 1959, while reading over one of her cases (Ms. De Fina) found the document misfiled by Ms Minogue and confronted Colonel Tibbs of the JAG Corp with the document.

Ms. Minogue was publically so reprimanded for the misfiling of this document that she cried.

Counsel was told that an explanation of the document would be given to her on March 20, 1959 at 9:50a.m. An "explanation" was given to counsel on March 20, 1959 by General Jones, General Decker, General McCarr and Colonel Tibbs that they had taken care of her future and they dared her to do something about it. She was going to be disbarred by the United States Court of Military Appeals and would end her days in St. Elizabeth

Hospital for the insane.

In 1962 and 1963 when the plaintiff worked for ITT Thomas J. Minogue knew about the military and what it had done to plaintiff's counsel, as plaintiff alleges in "19" of his amended complaint, which follows:

"19. The defendant, Thomas J. Minogue, threatened to ruin plaintiff, his sister and attorney, Madeline De Fina, on July 8, 1965. The defendant, Thomas J. Minogue, had a woman phone plaintiff's attorney and wanted to speak to only Miss De Fina. The defendant, Minogue, then told plaintiff's attorney that he waited "three years" to tell her "off" that what the military had done to her was nothing compared to what he was going to do to her through ITT FED LABS, and to the plaintiff we were finished."

The false employment dates given by ITT do not include the period of time during which the plaintiff's sinus condition was brought on by making plaintiff work on a "beacon" which had a blower in it that caused plaintiff to inhale particles of dust, as he worked on it.

The sinus condition plaintiff suffered from in the Air Force left plaintiff'ssinuses weak and this blower activated his sinus condition.

Documents that established the following facts were offered to Judge Knapp on September 16, 1975, and to Magistrate Schreiber appointed by Judge Knapp, on October 9, 1975, and again to Judge Knapp on February 6, 1976(JA3) when

plaintiff appeared before him without an attorney.

One of the offered documents established the fact that in August 1963 the first symptom appeared that plaintiff's sinuses were infected by the blower. Plaintiff suffered severe headaches.

September 9, 1963 plaintiff went to ITT's Nurse, Ms Sutshall, and asked to go home. His request was refused. She gave him pills to kill the pain.

September 11, 1963, plaintiff went again to Nurse Sutshall. Again she refused to permit plaintiff to go home.

September 15, 1963, plaintiff went to Brooklyn Eye and Ear Hospital and saw a specialist, Dr. Stedfeld. Plaintiff's sinus condition was getting acute. ITT refused plaintiff sick leave.

Septemnber 18, 1963, while he was at work plaintiff's left eye was closing and plaintiff sought permission to go to Dr. Stedfeld. He could not stand the pain. Permission was denied by the nurse.

Plaintiff told the Union representative and his superior he had to leave to see Dr. Stedfeld at once. Plainwas warned that if he left he would be discharged for insubordination. During this time plaintiff was compelled to work overtime.

When Dr. Stedfeld saw plaintiff on September 19, 1963, he could not believe the inhumanity of ITT and Dr. Long towards the plaintiff and phoned Dr. Long. Plaintiff does not know what Dr. Long said to Dr. Stedfeld, but Dr. Stedfeld said to report Dr. Long to the Medical Society.

Dr. Stedfeld gave him the following letter:

"September 19, 1963

TO WHOM IT MAY CONCERN:

This is to certify that Mr.Richard J. De Fina is suffering from an acute infection of the left frontal sinus, as proved by the clinical findings and vertified by X-ray pictures.

At the patient's first examination on 9-15-63, the symptoms were alarming. The left side of the forehead, being extremely sensitive to touch, was already swollen, and the left eye was beginning to close, signs that the infection was going to invade the bone and endanger the life of the patient.

This condition caused the patient very severe pain and unabled him to work. His company was informed in this respect.

Fortunately, the patient responded promptly to the treatment, so that the infection has cleared up to a great extent. The patient, however, is not yet entirely free of pain.

H. Stedfeld,M.D."

September 20, 1963 a complaint was made to the medical society.

December 3, 1963 at 8p.m. a hearing was scheduled and plaintiff and his attorney were kept there until nearly midnight. Plaintiff was told by the Medical Society that if he did not value his life more than his job to blame himself, not Dr. Long.

In other words he should have consented to be discharged for insubordination and have gone to the doctor.

Plaintiff felt otherwise. He did not want on his record that he was discharged for insubordination.

Plaintiff received from the V.A. under the F.O.I.A. a document dated 11-22-63 disallowing his claim filed as a result of his acute sinusitis attack while working on the "Beacon."

The V.A. had been in secret communication with ITT in 1963 and with Dr. Long, and this rating report states: "SRs discloses vet was hospitalized 8-14-63 until 8-18-63 for acute sinusitis, left frontal" .."VAX disclosed no evid...sinus condition." That is a false statement. Plaintiff was not hospitalized 8-14-63 to 8-18-63.

Another false statement of the V.A. dated July 1, 1971, states: "1964"

"acute attack
3 months
B'klyn Eye and Ear Hospital
Dr. Stedfeld"

The date of plaintiff's acute sinus attack was 1963 and it occurred while he was working for ITT on the "Beacon."

It is needless to further belabor the fact that ITT falsified plaintiff's records and the falsification of these false records was perpetuated by the Federal defendants in their permanent records.

Decisions Below

Im Judge Knapp's Memorandum and Order(#43951JA16-35) Judge Knapp's only concern was to clear and "Vindicate" the fabricating Federal and Non-Federal defendants, who obviously and undisputably falsified Federal records to

cause plaintiff to lose his sky marshal position (plaintiff's amended Complaint,para.7) and to keep plaintiff unemployed. Evidence of the falsification of plaintiff's records must be suppressed at all costs and plaintiff must be made to appear with his attorney and sister as bringing "vexatious litigation" and making "frivalous and hysterical allegations" (JA34).

At the time of the pre-trial, Judge Knapp showed great boredom by his yawning any time plaintiff or his attorney spoke, but his yawning would cease when ITT and Minogue's attorney Mr. Goldberg, or the AUSA Gerber spoke.

Plaintiff tried to get Judge Knapp to look at his suitcases full of evidence that the records had been falsified, but Judge Knapp refused stating that the case might be given to the Grand Jury after he,Judge Knapp, appointed a Magistrate. At this Mr. Goldberg jumped and his expression was one of incredulous disbelief that Judge Knapp would make such a statement.

October 9th when the appointed Magistrate was allegedly to conduct a hearing he immediately disqualified himself(JA3), then went on to question Mr. Goldberg about EXA4 dwelling on the part in the exhibit which states"... and she had him out of wedlock. He used his grandmother's name as his mother..." trying to literally coax Mr. Goldberg and AUSA Gerber to expunge this from the record.

Neither would agree; adamantly they affirmed that

they would stand on the records and any attempt to remove it would be fought right up to the highest Court, the Supreme Court of the United States.

Neither plaintiff nor his counsel knew at the time that the day before, October 8, 1975, AUSA Gerber had served on Magistrate Schreiber and Judge Knapp, and filed with the Clerk, a motion to dismiss(JA3).

A false statement is on file that this motion was served on plaintiff on October 8, 1975, when in fact it was sent by mail days later and received about October 15th, 1975.

This was revealed when Magistrate Schreiber in, "exasperation" held the exhibit up and pointing to the offensive statement above quoted said to AUSA Gerber in substance,"You are asking Judge Knapp in your motion to throw out these cases, how can you when they have merit?"

Plaintiff's attorney immediately asked, "What motion?" Nobody answered. Then plaintiff's attorney stated in substance,"You mean the motion Judge Knapp told him to make in July, and which he never made?" (JA3)

Magistrate Schreiber went on to state what he would do if anyone said that about his mother or about him. He demanded of Mr. Goldberg what he would do, and he said he would not like it. AUSA Gerber said the same,and Magistrate Schreiber said to AUSA Gerber you will appeal if this is expunged, what do you think she will do if it is not?

This appeal is the answer.

On December 29, 1975 Magistrate Schreiber sent to counsel a letter containing the following:

> "... the hearing held before me on October 14, 1975. A few days after that hearing, she appeared before me along with one Richard DeFina who is the plaintiff in four other cases pending before Your Honor. At that time both Madeline and Richard DeFina requested that I withdraw from the matter and thereafter, I notified Your Honor of this event." (JA3)

The above is absolutely false and was so admitted on January 15, 1976 in a hearing held by Magistrate Schreiber.

POINT I

THE PLAINTIFF'S CAUSES OF ACTION AGAINST THE DEFENDANTS, ITT AND MINOGUE, WERE ERRONEOUSLY DISMISSED ON JURISDICTIONAL GROUNDS.

Plaintiff"proffered" for almost two years his Complaint, Pre-trial brief, other briefs, motions and affidavits to prove that he was rightfully in the Federal Court on the Constitutional violation of his right to privacy and other Constitutional violations and did cite as stated (Def. Ap.Br.p.10) the IX Amendment of the Constitution of the United States.

This "catch all" Amendment IX was cited by the plaintiff instead of"enumerating" all the Amendments of the UnitedStates Constitution the defendants violated.

As stated by Attorney General Levi in his article

in the New York Law Journal (April 30, 1975,page 6,col.8):

> "A number of the rights enumerated in the Constitution's first Ten Amendments are said to cast "penumbras" which overlap to produce the "right of privacy" a shadow that secures from public view and intrusion certain aspects of human affairs."

Plaintiff will take up this question of the invasion of his privacy and other Constitutional rights in PointII.

On October 9, 1975 Magistrate Schreiber asked Mr. Goldberg, Attorney for ITT and Minogue, for the affidavit he had required to dismiss plaintiff's complaint on the ground of lack of diversity.

When Magistrate Schreiber read the affirmation (JA 14) he actually threw it back at Mr. Goldberg in anger. The facts in Mr. Goldberg's affirmation were a re-assertion of the facts plaintiff was and is maintaining.

That ITT is a corporation duly incorporated in the state of Delaware and is only "qualified to do business in New York"(aff.Goldberg),and ITT has not got its principal place of business in New York; the state of residence of the plaintiff.

Magistrate Schreiber disputed this. He stated that he knew due to his handling of cases that ITT had its principal place of business in N.Y.City.It now is confirmed that Judge Knapp was under the same misapprehension(JA23-JA24).

This is not the only basis for jurisdiction. There is the violation of plaintiff's Constitutional rights (a Federal question) and the Court has jurisdiction (Sect.1331Title28USCA).

The defendants' brief,pages 8-10, is so mixed up distorted and twisted,that the best reply is to lucidly set forth the facts and law the defendants seek to confuse.

1. Plaintiff discussed Section 1331 and 1332Supra.

2. Plaintiff discussed that he never alleged a cause of action against ITT under the Freedon of Information Act(Suprap.p.8,9).

3. Plaintiff is not suing for defamation as defamation and this has been fully brought out, and will be further discussed in Point II of this Reply, as well as the corporation's liability for damages for the violation of plaintiff's right to privacy.

Reply to Defendants' II-pagell

Section 301 CPLR states: "Jurisdiction over persons, property or status, A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore."

In New York Practice under the CPLR Herbert M. Wachtell states on page 31:

> "Personal Service Outside of the State-CPLR Section 313
> In certain circumstances, in personam jurisdiction over a defendant may be obtained by service of the summons outside of the state. Such service is provided for by CPLR Section 313 where the defendant:
> ...
> (2) is subject to the in personam jurisdiction of the New York courts under CPLR Section 302;or"

On pages 32 and 33 he states:

> "Section 302, which is modeled after an Illinois statute, represents a major expansion of the instances in which the New York courts may exercise in personam jurisdiction over non-residents and foreign corporations. It has been carefully drawn to take advantage of the recent apparently broadened power of a state constitutionally to assert in personam jurisdiction over non-residents who have had only minimum contacts with the state.
> .....
> a non-resident who has been involved in a motor vehicle accident in the state...."

Minoque, as the Industrial Public Relations executive of ITT Corporation for about twenty years and who has violated plaintiff's constitutional right to privacy since 1963, on behalf of his employer, ITT, cannot deny that he has "minimum contact with New York state," where the World Headquarters of his employer is located, to wit, 320 Park Avenue, New York City.

Minogue comes squarely within Section 302 of the CPLR and is subject to the jurisdiction of this court and it was error to dismiss the complaint as against him.

POINT II

JUDGE KNAPP'S IGNORAL OF AND REFUSAL TO PASS UPON OR EVEN ACKNOWLEDGE THE ALLEGATIONS CONTAINED IN PLAINTIFF'S COMPLAINT, MOTIONS, PLEADINGS, BRIEFS AND AFFIDAVITS THAT ITT CORPORATION AND ITS EMPLOYEE MINOGUE HAVE VIOLATED PLAINTIFF'S CONSTITUTIONAL RIGHT TO PRIVACY AND HIS DISMISSAL OF PLAINTIFF'S COMPLAINT ON JURISDICTIONAL GROUNDS IS REVERSIBLE ERROR

In Levi's article (supra,p.26) he states that the FBI used informers to get around the Fourth and Sixth Amendment of the Constitution of the United States and that a number of the rights enumerated cast "penumbras" which overlap other rights.

Somewhere in some legal opinion counsel read that the Fourth and Sixth Amendments of the United States Constitution overlap and are covered in the "catch all" Amendments, the 9th and 14th.

Plaintiff mentioned only the 9th Amendment in paragraph one of his complaint but throughout his complaint he asserts the violation of his right to privacy. In his other pleadings, motions and briefs plaintiff mentions the violation of his rights under the 4,6,9, and 14th Amendments of the United States Constitution

Defendant's brief,page 10, states in relevant part: "...although he(plaintiff) attempts in his amended complaint to predicate his cause of action against ITT for jurisdictional purposes on "Invasion of privacy" in violation of the Ninth Amendment...."

The defendants' brief studiously avoids any mention of plaintiff's affidavits, briefs, pleadings, and papers that went into details as to the violation of plaintiff's Constitutional rights including plaintiff's right to privacy under the 4th,6th,9th, and 14th Amendment of the United States Constitution.

These defendants took advantage of Judge Knapp's bias and prejudice towards the plaintiff and are doing the same in their brief as Judge Knapp did in his opinions and judgments(JA16-50).

Numerous decisions have established that the false publication of one's private life may conceivably call into play, defamation, invasion of privacy, infliction of emotional distress, lost of standing in ones community, and lost of employment and of "liberty" in violation of that person's Constitutional rights.

Plaintiff's first and amended complaint (JA13-14) alleges and gives exhibits as proof that the two defendants admitted the invasion of plaintiff's privacy and the false publication of plaintiff's private life to give plaintiff a motive for concealing an unsavory background that he was ashamed of by "using his grandmother's name as his mother."

This false information given by ITT and its employees on February 3rd, 4th, 8th, 1971 to the United States Civil Service Commission which was investigating plaintiff's background forced plaintiff to have to

resign his sky marshal position due to "eye sight" or be prosecuted.

Not knowing what he would be prosecuted for plaintiff called his attorney, Madeline DeFina, and asked her to speak to Mr. O'Brien who had made the statement about prosecuting him. Mr. O'Brien spoke to her of prosecution under Section 1001-Title 18USCA if plaintiff did not resign and although this threat was then incomprehensible to both plaintiff and his attorney(now it is known it was ITT's false EX A4)Mr. O'Brien's statement about plaintiff's eyesight appeared to be legitimate and she advised him to resign.

Plaintiff legally adopted at age 2 by Rose and Rocco De Fina gave them as his parents when he became an employee of ITT on September 17, 1962. Plaintiff was called into the office of ITT personnel in January 1963 and questioned about his being adopted. He referred them to his attorney, Madeline DeFina.

In a strongly protesting letter(pl.1st Compt.EX6) counsel protested this to ITT Vice-President Chasen and demanded the investigatiom be immediately stopped. That plaintiff's mother was legally married when plaintiff was born and that he was not illegitimate,

Under the F.O.I.A. plaintiff received EXA4(att-pl. amend.compt). The substance is so libelous that it cannot be stated in this reply except in the following manner:"Richard De Fina...lasted about a year...1965..the major thing

I remember about Richard is his sister...actually she was not his sister when she began to give us trouble..I made some discreet inquiries concerning her...that she was actually Richard's mother, that she had him out of wedlock. He used his grandmother's name as his mother...she had a tremendous influence over Richard and it was all bad..."

Harvard Law Review, December 15, 1890 on "THE RIGHT TO PRIVACY" written by Judge Samuel D. Warren and Judge Louis D. Brandeis states in revelant parts:

page 193

"...Thus, in very early times the law gave a remedy only for physical interference with life and property, for trepasses vi et armis. Then the "right to life" served only to protect the subject from battery in all its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. ....the right to be let alone... ..the right to liberty.....

page 219

....the community has an interest in preventing such invasions of privacy....

page 220

....The common law has always recognized a man's house as his castle...Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?"

In Edgar Paul vs. Edward Charles Davis III, reported in The United States Law Week, 3-23-76; 44LW4337, it was held that reputation alone, apart from some more tangible interests such as employment, does not implicate any "liberty" under the 14th Amendment of the United States Constitution.

Clearly if petitioner had lost his employment he would have a claim under the 14th Amendment.

Plaintiff in this action 75Civ. 2362 lost his employment due to defendants invasion of his privacy, and still, due to the "fruits" of this illegal invasion of his privacy remains unemployed.

CONCLUSION

For the foregoing reasons, plaintiff respectfully requests this Court to reverse all the decisions and Orders of Judge Knapp, made and entered herein (JA 1-50) denying to plaintiff any relief whatsoever, and ignoring and refusing to pass upon the allegation of plaintiff's complaint as to the Constitutional violation of plaintiff's right to privacy and plaintiff's right to injunctive relief (Pl.comp.para.1, 20, 21, Ex.A4,22,25,28).

Plaintiff further requests this Court to reverse the Order and judgment made and entered herein on May 26, 1976, in this action 75 Civ. 2362 (JA 14) and that the complaint in 2362 be reinstated, unconsolidated, with any other case, and that plaintiff be given the right to enjoin the International Telephone and Telegraph Corporation (which has taken over the assets and records of its dissolved subsidiary, the defendant, ITT Federal Laboratories) from falsely maintaining and giving out records that give plaintiff a motive for "using his grandmother's name as his mother" (pl.compl.ExA4) after the defendants, ITT and

Minogue, caused a "discreet" investigation in violation of plaintiff's Constitutional right to privacy.

Dated: Flushing, New York, October 8, 1976

Respectfully submitted

Attorney for Plaintiff-appellant

2 copy received 10-12-76

Margaret Tomsen

Hanner, O'Rourke, Hegarty

COPY RECEIVED - 2 COPIES

Robert B. Fiske,

UNITED STATES ATTORNEY

Oct. 12, 1976